IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

CRL.A.No. 1233 of 2003()

AGAINST THE ORDER IN CRLP.88/2003 Dated 20/06/2003
CC.552/1997 of JUDL. MAGISTRATE OF FIRST CLASS, KUNNAMANGALAM

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APPELLANT: COMPLAINANT

KANNANKUTTY, S/O.VELLAN, PULLAMKODE
MALAYIL, P.O.NECHOOLI.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: ACCUSED & STATE

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1. SULOCHANA, D/O.VELLAYI, PULLAMKODE
MALAYIL, P.O.NECHOOLI.

2. PRAKASAN,
PULLAMKODE MALAYIL,
P.O.NECHOOLI.

3. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.P.J.MATHEW
SRI.THOMAS JOHN AMBOOKEN
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.1233 of 2003(A)

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Dated this the 23rd day of October, 2007

J U D G M E N T

The appellant is the complainant who had instituted a private complaint against accused, two in number, with respect to the offences under Sections 143, 147, 341, 427, 447, 506(ii) read with Section 149 of the Indian Penal Code.

2. It is the prosecution case that on 10/12/1996 at about 3.30 p.m., the accused and about 15 other persons attempted to assault the complainant and his wife and to convert the Neerchal in between the property into a pathway. It is alleged that the complainant and his wife were forcibly brought out from the house to the courtyard and criminally intimidated uttering that they would be killed by brandishing a sickle. The complainant and his wife was wrongfully restrained and the accused committed mischief by cutting the pepper vines, plantains, arecanut trees and also destroyed the Neerchal that resulted in a loss of Rs.1,000/- to the complainant. On the next day the

complainant filed the complaint before the police but the police did not take any action due to the influence of the accused. Hence, on 07/01/1997 the complainant filed petition before the court below which has been taken cognizance of.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3 and Exts.P1 to P4. Defence got marked Ext.D1.

4. The court below acquitted the accused mainly on the ground that the evidence of PW.1 was not consistent with respect to the allegation that the incident took place on 10/12/1996 as it was stated that it was when the Commissioner inspected the property for the second time that the incident took place. But Ext.P3 report of the Commissioner shows that she inspected the property on 16/01/1997, i.e., about one month after the date of the incident. It is the view of the court the version of PW.2 is unbelievable as he is a relative of PW.1. Nothing is mentioned about PW.3 who has inspected the property and filed the report, and about her report that the cut

down pepper vines, arecanut trees and plantains were found at the spot. It is pointed out by the counsel for the appellant that PW.1 at the time of tendering evidence was aged 80 years and that he has testified as to the incident as per the averments made in the complaint as to the date, time and as to the words uttered by the accused threatening to do away with him and his wife and as to the trespass, wrongful restraint and mischief committed and as to the loss sustained. It is stressed that when he was questioned in the cross he has stated that the incident took place when the Commissioner came to the property for the second time. But in further cross he has stated that the Commissioner was not present when the incident took place and that he erred, and that the Commissioner visited the spot after one month of the incident.

5. I find that the court below has acquitted the accused only on the basis of the above discrepancy in the version of PW.1. I find that in view of the explanation of PW.1 in further cross it is evident that he was mistaken in the cross-examination when he stated that the incident took place when the Commissioner

inspected the property for the second time. As pointed out by the counsel for the appellant the fact that PW.1 was at that time 80 years is also to be taken into consideration. The evidence of PW.2 is not impeached except for the fact that he is the nephew of PW.1. It is to be noted that the accused are also close relatives of PW.1. I find that the evidence of PW.3 the Commissioner is very relevant in the matter. She has stated that she has visited the property on 16/01/1997, i.e., just after one month after the incident and that she saw at the spot, dry remains of the arecanut trees, plantains and pepper vines and that she has specifically stated that the arecanut trees were aged about 2 to 3 years and some of the pepper vines about 10 years and some others four years and that the above were found cut down and that she has mentioned in the commission report that the loss sustained amounted to Rs.1,000/-. I find that the version of PW.3 Advocate Commissioner supplements the version of PWs.1 and 2. The version of PW.1 as to the rest of the evidence except the date stands unimpeached. He has specifically stated that himself and his wife were taken out of the house by force and were wrongfully restrained, confined and they were

threatened that they shall be done away with and that a sickle was brandished at them. I find that the court below has not examined the evidence of PWs.1 to 3 in the proper perspective. It stands established beyond reasonable doubt that the accused have committed the offence alleged. It is the version of PWs.1 and 2 that the accused along with about 15 identifiable persons committed trespass and destruction etc. as alleged.

In the result, the order of the court below is set aside and the accused are convicted and sentenced to pay a fine of Rs.500/- each for the offence under Section 341 read with Section 149 I.P.C and in default to undergo simple imprisonment for two weeks each; and also sentenced to pay a fine of Rs.500/- each for the offence under Section 447 read with Section 149 I.P.C and in default to undergo simple imprisonment for two weeks each and also, sentenced to pay a fine of Rs.3,000/- each for the offence under Section 506(ii) I.P.C and in default to undergo simple imprisonment for one month each, and also sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs.3,000/- each for the offence under Section 427 I.P.C

and in default to undergo simple imprisonment for one month each. Out of the fine amount, if realised, a sum of Rs.5,000/- shall be paid to PW.1. The criminal appeal is disposed of as above.

Sd/-
K.R.UDAYABHANU,
Judge

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P.A.to Judge